srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3533 OF 2007.

Sanjay Baburao Jadhav
Age: 33 years, Occu: Service,
R/o: G-308, Gandhi Nagar Press quarters,
Near Up Nagar, Nashik Poona Road,
NASHIK. ..Petitioner.

Versus.

1. The State of Maharashtra
through its Principal Secretary
to the Ministry of Urban Development
Deptt., having its Office at
Mantralaya, Mumbai - 32.

2. Addl. Collector and
Competent Authority, ULC, Nashik.

3. Tahasildar,Nashik.

4. The Sub-Registrar, Nashik.

5. Municipal Corporation of Nashik,
thr: its Municipal Commissioner. ..Respondents.

Mr. Girish S. Godbole for the petitioner.

Ms. Smita Gaidhani for the respondent no.5.

Mr. C. R. Sonawnae, A.G.P. for the State.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.

DATE: AUGUST 4, 2007.

ORAL JUDGMENT.

1. Rule, returnable forthwith. By consent called for hearing.

2. By this petition the petitioner challenges the letter cum order dated 19th March 2005 issued by the respondent no.1 informing the intention of the

Government to take up in revision under Section 34, various orders passed under section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, "the ULC Act".) including the order passed in the petitioner's case and staying the operation of all orders passed under section 8(4) of the ULC Act. The Petitioner also challenges the subsequent letter dated 29th March 2005 written by the competent authority whereby it informed the petitioner that no transfer of the property should be made since the order under section 8(4) of the ULC Act was proposed to be revised. The petitioner also challenges the communication by the competent Authority to the respondent no.3 Commissioner, Nashik, Municipal Corporation that no building permission should be granted for carrying out construction on the land in question.

3. The petitioner is a purchaser of a flat which has been constructed on the land in question. Owner of the land filed a return under section 6 of the ULC Act. By an order dated 19th September 1995 the land in question was held to be within the "ceiling limit" of the original owner. Thereafter the owner appears to have entrusted the development rights in respect of the land in question to a developer and promoter for construction of building. The petitioner is a flat purchaser in the said building. The petitioner is in occupation of the flat. However, the

builder has expressed his inability to register the sale-deed in view of the impugned order or communication.

4. The original order under section 8(4) of the ULC Act was passed on 19th September 1995. For over 10 years no powers of revision were exercised by the State Government. In **Automotive Research Association of India and Another V/s. State of Maharashtra & others reported in 2003 Bom. C.R. 278,** Division Bench of this Court has held that the powers of revision under section 34 of the ULC Act must be exercised within a reasonable period of time. Following the said decision, in another decision we have held that the reasonable period would not ordinarily exceed three years. In the instant case the powers are sought to be exercised after 10 years and that too without giving any reason for such delayed exercise. In the circumstances, in our opinion, the respondent No.1 clearly had no jurisdiction and power to exercise the power of revision after the lapse of 10 years.

5. In the present case we also find that after the order under section 8(4) of the ULC Act was passed the property has changed hands, building permission has also been granted; building has been constructed and the innocent flat purchasers have purchased flats in the building. In the circumstances, there was no

reason to exercise the power under section 34 of the ULC Act after lapse of 10 years. Assuming that the power exists it could not have been exercised when third party interests have been created and that too without notice to the persons likely to be affected thereby.

6. In the circumstances the writ petition is allowed. Letter dated 19th March 2005, copy of which is at Exhibit -"P" to the petition and letters dated 29th March 2005, copies of which are at Exhibits "Q" and "R" respectively to the petition are hereby quashed so far as the land in which the flats of the petitioner herein is situated.

7. Rule is made absolute to the extent indicated above.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**